

## Alaska Department of Environmental Conservation

And

Environmental Protection Agency

State Fiscal Year 2013

July 1, 2013 – June 30, 2014

This Agreement constitutes the State of Alaska's relationship with the United States Environmental Protection Agency (EPA) under the National Environmental Performance Partnership System. The Alaska Department of Environmental Conservation (DEC) enters the agreement for the State of Alaska with EPA Region 10, for state fiscal year 2014 (July 1, 2013 – June 30, 2014).

This Agreement describes the expected work and performance results for each of the agencies. The Performance Partnership Agreement [PPA] is an important tool that strengthens the protection of the environment by encouraging flexibility to focus on the activities that achieve the best environmental results consistent with the missions and authorities of each agency.

DATE: \_\_\_\_\_

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Larry Hartig, Commissioner  
Alaska Department of Environmental Conservation

DATE: \_\_\_\_\_

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Dennis McLerran, Regional Administrator  
U.S. Environmental Protection Agency, Region 10

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## I. Introduction and Purpose

The National Environmental Performance Partnership System is a framework designed to achieve better environmental results by focusing the capacities and resources of the Environmental Protection Agency (EPA) and States to jointly address the most pressing environmental problems. Common goals, priorities, and strategies are based on information about environmental conditions, and progress is evaluated based on results actually achieved in the environment. Performance Partnership Agreements (PPA), through which EPA and states set priorities and design strategies, are intended to strengthen protection of the environment by focusing resources on agreed upon environment protection goals.

This State Fiscal Year (SFY) 2014 PPA describes the overlapping missions of the Department of Environmental Conservation (DEC) and EPA for protecting Alaska's environment. The Agreement describes how each agency will work together to achieve joint priorities and performance expectations in order to address Alaska's most important environmental and public health protection issues.

- The purpose of the agreement is to establish mutual priorities and performance expectations for both agencies during SFY 2014.

This Agreement includes specific commitments made by each agency regarding Alaska's most important environmental priorities for the period July 1, 2013 – June 30, 2014.

## II. Missions

DEC and EPA Region 10 both share a common mission to protect Alaska's environment consistent with State and Federal law.

**DEC Mission:**

Protect human health and the environment.

**EPA Region 10 Mission:**

Protect and restore the environment of the Pacific Northwest and Alaska for present and future generations.

### **III. Agreement Coverage**

This Agreement is based on the National Environmental Performance Partnership System (NEPPS) and EPA's Office of Congressional and Intergovernmental Relations (OCIR) NEPPS National Program Guidance which allows states flexibility to address their highest environmental priorities and establish resource allocations based on those priorities. This Agreement includes DEC and EPA Region 10 environmental priorities that have been identified as areas of partnership for the two agencies. The guiding principles and concepts of this agreement apply to all DEC and EPA interactions even though this Agreement does not cover all DEC programs receiving EPA grant assistance.

In addition to this Agreement, the State of Alaska receives two Partnership Performance Grants [PPGs] which include specific workplan commitments for water quality programs, and radon and air quality programs. The purpose of the PPGs is to reduce the administrative burden by consolidating several grants into one and to increase the flexibility of DEC to move resources within the air and radon programs, and within the water quality programs, to meet Alaska's highest environmental needs. **Those PPGs are included as an appendix to the final agreement.**

### **IV. State of Alaska**

Alaska is different from the other EPA Region 10 states. Alaska is the nation's only arctic state, with environmental issues more common to Russia, Finland, Sweden, Norway, Greenland, and Canada than to other states. Alaska is also the largest ocean state in the country and its oceans include the North Pacific Ocean, and the Bering, Chukchi, and Beaufort Seas. Alaska has 33,904 miles of shoreline – twice the length of all the other states combined. The estimated tidal shoreline, including islands, inlets and shoreline to head of the tidewater, is 47,300 miles. Alaska occupies 20% of the nation's land base, 40% of the nation's surface water, and contains half the nation's wetlands.

Alaska has vast proven and unexplored natural resources. Alaska oceans and coastal watersheds produce 10% of the nation's oil, over 50% of the nation's seafood, and minerals from several world-class mines, including the world's largest operating zinc mine and the largest producer of silver in the United States.

The unique regional qualities of Alaska's ocean and watershed resources are also reflected in their quality. Alaska's resources, for the most part, are healthy, productive, and relatively pollution-free. The EPA's most recent report on the condition of the nation's coast concludes that, "Alaska's coastal resources are generally in pristine condition. Concentrations of contaminants have been measured at levels significantly lower than those in the rest of the coastal United States."

Most of Alaska's communities are isolated, small, and can only be reached by air or water. There is no statewide power grid, so most Alaska communities depend on energy produced from individual community diesel generators. Alaska is also the home of 229 federally recognized tribes in Alaska – over 40 percent of the nation's total number of tribes.

Alaska's state resource and public health protection agencies are actively pursuing appropriate forums for coordinating with their federal agency counterparts on environmental and public health protection issues of mutual concern.

## **V. Priorities**

### **1. Timely Communication on Controversial Projects/Issues.**

DEC and EPA shall encourage effective and timely communication on large or controversial projects.

DEC and EPA will:

- Designate for specific mining and oil and gas projects, EPA Project Managers or Team leads who will serve as a primary point of contact for EPA to meet and review the status of ongoing projects, schedules and issues. Mining and Oil and Gas sector managers will meet on a routine basis to review status of major projects, discuss federal and state legal and policy requirements, and identify any issues needing resolution.
- Maintain communication as needed throughout the year to facilitate the resolution of mutual concern that might arise in Alaska regarding TRI reporting and data use.
- Identify high priority 404 Program projects that need special coordination.

DEC will:

- Identify a point of contact for the state for coordinating high priority 404 Program projects that need special coordination.

EPA will:

- Continue to provide technical assistance including review and comments for TRI documents and brochures to help Alaska educate its citizens on TRI. Prior examples of this assistance include the “Guide to the Toxics Release Inventory for Alaska” and “Factors to Consider when Using TRI Data”.
- Maintain timely notice of activities from EPA headquarters and Region 10 including proposed rulemaking changes that may affect Alaska.
- Maintain timely and open communication with DEC about potential 404 permitting decisions and National Environmental Policy Act (NEPA) actions that could adversely affect the State of Alaska.

## **2. Oil & Gas Coordination**

Oil and gas exploration in the Alaska onshore and offshore as well as Outer Continental Shelf (OCS) is continuing and may ultimately result in new development and production activities. Currently, EPA is the water permitting authority for OCS sources and for NPDES permits related to oil and gas into state offshore waters until NPDES Phase 4 delegation is complete. Because of current and future shared permitting responsibilities, DEC and EPA will need to continue to develop and define roles and approaches for permit development and compliance activities. EPA is no longer the air permitting authority for future oil and gas projects on the OCS off of the North Slope Borough, but retains this authority for air quality permitting on existing OCS air permits, on the OCS off Cook Inlet and elsewhere in Alaska. Lastly, the use of pesticide (biocide) products in the scope of oil and gas activities has been increasingly identified as a concern through community and tribal input. EPA and DEC oil and gas program staff will endeavor to stay apprised of new Federal hydro-fracking rules and share information as it becomes available.

### Water

Water permitting for offshore and OCS sources involves significant data acquisition and evaluation for completion of Ocean Discharge Criteria Evaluations (ODCEs) for permitting actions for discharges seaward of the baseline Mean Lower Low Water or otherwise defined). Additional permitting requirements may be incorporated into permits based on the outcome of ODCE's, Endangered Species Act or Tribal consultation and collection of Traditional Knowledge. DEC is committed to providing

timely 401 certifications upon receiving EPA's requests. Continuity between these state and federal wastewater discharge permits is a significant concern for industry, tribal governments and other stakeholders.

EPA and DEC will:

- Meet quarterly to coordinate oil and gas issues and actions of mutual interest. Oil and gas managers will brief senior managers on the status of major projects, discuss federal and state legal and policy requirements, and identify any programmatic issues needing resolution or work group development. Oil and gas managers will track and routinely share evolving dispersant use policy to ensure appropriate decision-making and identification of potential nexus with permitting actions. Other federal agencies or state departments may be incorporated into these meetings as necessary.
- Develop a strategic approach to address and incorporate issues of mutual interest and concern, such as Endangered Species Consultation, Health Impact Assessments, Tribal Government Coordination and Consultation, Effluent Limitation Guidelines, as well as application and use of Traditional Knowledge into permitting processes where shared boundaries and jurisdictions exist.

### **3. Rural Alaska Environmental Challenges**

In order to improve environmental conditions in rural Alaska, DEC and EPA Region 10 will work to improve collaborative strategic planning efforts with Tribes in Alaska. A key component of meeting common goals is communication on a regular basis between EPA, DEC, and Alaska Tribes about technical assistance, educational, and funding opportunities so that information can be compiled and passed along to Tribes. It will be our goal to create opportunities for partnerships between DEC, EPA, and the Alaska Tribes.

DEC has identified several environmental issues that are specific to rural Alaska, including the effects of long-term exposure to the exhaust from the diesel generators that provide electrical power to nearly all of the rural villages, fine and coarse particle dust pollution in rural communities, and sustainable operation and maintenance of village sanitation projects. EPA has seen increasing evidence that burning of solid waste in burn barrels, and at open dumps or landfills may be posing significant health risk to Alaska tribal communities.

The EPA has a government to government relationship with, and trust responsibility to tribes. EPA Region 10 will continue to work in partnership and consultation with all federally recognized tribes. EPA recognizes that tribes have the authority to set their own environmental priorities and will continue to work with tribes in a manner

that acknowledges tribal sovereignty and self-determination. In implementing the Indian Environmental General Assistance Program (IGAP), EPA works to build tribal environmental capacity and adequate internal mechanisms to help tribes improve environmental protection. The IGAP provides grants to Tribes for the purpose of developing their capacity to develop and implement environmental protection programs. IGAP resources may also be used to implement solid and hazardous waste programs. In light of the unique solid waste challenges facing Alaska Native Villages, EPA Region 10 will continue to utilize the implementation authority provided under IGAP to assist tribes in the development and implementation of integrated waste management programs. In parallel, the Region 10 Office of Air, Waste and Toxics, Tribal Solid and Hazardous Waste Management Program, will continue to provide tribal solid waste assistance through the RuralCAP hosted Senior Environmental Employee.

Under Alaska's federally recognized constitution, Alaska Natives and members of Alaska's federally recognized tribes have all the rights and responsibilities of Alaska citizenship. Under state law, DEC serves the interests of all Alaskans as represented by the state's elected officials.

The EPA Tribal Solid and Hazardous Waste Program's goals are to support programs to prevent hazardous materials from entering Alaska's waste stream and to collaborate with DEC to provide technical assistance which results in safer waste management practices in Alaska Tribal communities. The Region 10 Tribal Air Team works collaboratively with DEC, Tribes and other partners to increase understanding and support strategies to address the causes and prevention of air pollution in rural Alaska.

EPA and DEC will:

- Continue to hold quarterly teleconferences to discuss tribal environmental and waste management issues.
- Continue to support regular teleconference calls with tribal environmental professionals, DEC, and other partners, to raise awareness and share possible response strategies to air pollution from residential wood heating, road dust, solid waste burning, diesel emissions, and indoor air.
- Participate in the Alaska Forum on the Environment (AFE) and other appropriate venues to better communicate with tribes and other partners on solid waste and air-related initiatives and topics relevant to rural Alaska and tribal communities.
- Work collaboratively to evaluate the CWA 301(h) waiver facilities.



- Continue to help tribes to take steps to bring their open dumps into compliance with State of Alaska solid waste regulations and to reduce health impacts from any solid waste burning practices. For example, we will continue to conduct joint site visits to provide interested tribes with technical assistance and offer Rural Alaska Solid Waste Landfill Operator training.
- Continue to pursue collaboration with state, federal and tribal agencies and organizations to support mitigation of road dust pollution to raise the capabilities of rural tribal communities to access available funding, resources and information to work with their partners to effectively mitigate coarse particulate pollution (PM10) to levels in compliance with the NAAQS and safer to public health.
- Work collaboratively with tribes and other federal, state and local agencies and organizations to find the most effective partnerships that will support solutions to air quality concerns related to wood smoke, solid waste burning, diesel emissions, and road dust.
- Work together on air quality issues associated with open burning in dumps, burn barrels, or any other solid waste burning. DEC Air Quality staff will provide technical assistance to EPA staff including outreach and education activities.
- Collaborate through regular communication on work with tribal communities for increased air quality monitoring data, for support of conference calls with tribes on air pollution concerns, and for other opportunities to provide more effective information and support to tribes to better understand and address the air pollution sources within their communities.

DEC will:

- Provide the EPA Office of Air Waste and Toxics Tribal Solid and Hazardous Waste Program Database coordinator, with current information on the names of Alaska villages with Class III permits.
- Provide EPA Tribal Solid and Hazardous Waste Program with updates on the status of its Alaska Waste Erosion and Review (WEAR) Project. The WEAR Project is designed to develop an inventory of contaminated sites, landfills, and dumps in Northern Alaska, Western Alaska and parts of the Aleutian Islands, and; determine associated risks and mitigation plans for the same. The project will occur from 2011 through 2015, and is anticipated to include 95-100 villages, and uses \$1.4 million in funding from the BOEMRE Coastal Impact Assistance Program (CIAP).

- Partner with EPA to mitigate WEAR sites, where practical.

EPA will:

- Collaborate with the DEC and the Alaska Area Indian Health to keep the open dumps inventory (which is stored in the Indian Health Service Web Sanitation Tracking and Reporting System [WSTARS] national database) current.
- Identify dump sites that are being threatened by erosion, flooding and permafrost melting due in whole or part to climate change.
- Convene quarterly meetings with DEC to discuss waste management options for those tribal open dumps which are threatened by erosion, flooding or permafrost melting caused in whole or part by climate change. These dialogues will be in conjunction with the DEC Alaska Waste Erosion and Review (WEAR) project.
- Partner with the DEC Brownfield program to support their outreach to Rural Communities.
- Invite experts from both DEC and EPA to share information with Tribal IGAP grantees on air quality issues and their potential impact on human health, such as dust, mold, wood smoke, diesel emissions, climate change, children's environmental health, and other relevant issues.

#### **4. Timely Revision of State Water Quality Standards**

Water quality standards (WQS) are the foundation of Alaska's water protection and restoration efforts. DEC is required by the CWA to conduct a comprehensive review of the Alaska's WQS every three years to integrate current science and technology. Before changes to the WQS can take effect for CWA purposes, they must be approved by the EPA. DEC and the EPA are committed to working together collaboratively to ensure that appropriate WQS are in place. Due to ongoing delays in approval, this priority needs immediate attention.

DEC and EPA will:

- Work together on development of anti-degradation implementation procedures as the highest priority for the Triennial Review. Other high priorities needing work may include copper aquatic life criteria, site specific criteria, use attainability analyses, and human health criteria.
- Work together to develop a schedule for resolving WQS issues.

- Work together early in the WQS revision process to identify the information, data, and justification that may be needed to support the timely approval of changes to the WQS.
- Work together to bring about the early involvement of NOAA-Fisheries and US Fish & Wildlife (Services) in standards revisions when an Endangered Species Act (ESA) or Essential Fish Habitat (EFH) consultation may be required.
- Work together as EPA completes Tribal government-to-government consultation on WQS review actions.

DEC will:

- Work on development of anti-degradation implementation procedures as the highest priority for the Triennial Review.
- Provide EPA an opportunity to review draft revisions and discuss their comments with DEC, with a goal of ensuring consistency with the Clean Water Act, prior to the public comment period.
- Work to meaningfully involve tribal and local government representatives in the development of the anti-degradation policy.

EPA will:

- Keep DEC informed of EPA plans and drafts for regulations affecting or implementing antidegradation policies.
- Continue to participate in the DEC Antidegradation Work Group.
- Work towards final actions on the mixing zone and residues WQS revisions already adopted by the state.
- Where appropriate, raise issues that may be unique to Alaska waters in national WQS policy discussions.
- Provide review of draft revisions to Alaska's WQS to ensure their consistency with the CWA.
- Provide assistance to DEC to develop a tribal involvement approach, similar to the APDES tribal communication protocol, with the assistance of DEC's APDES local and tribal government coordinator.

## **5. Fairbanks Air Emissions - PM 2.5 Issues**

The Fairbanks 24 hour PM<sub>2.5</sub> nonattainment area (NAA) will require a focused effort and collaboration among major federal, state and local agencies to restore the area's air quality. Conditions and the sources that cause or contribute to air pollution in the Fairbanks NAA are not very well understood due to the extreme weather and complexity of sources. Efforts to solve the air quality problem will therefore require the EPA, DEC, USDOT, Fairbanks North Star Borough, the Department of Defense installations in the area, the community and industrial facilities in the Fairbanks area to work collaboratively to identify the sources and mechanisms that form air pollution in Fairbanks. Multiple technical studies and data gathering efforts are underway to understand how the activity in Fairbanks contributes to violations of the PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS). Once the sources and mechanisms of air pollution are identified, these constituents will need to work collaboratively to identify solutions that restore public health in the Fairbanks NAA. In-kind and funding resources, in addition to prioritization of the work needed to solve the problem in this area, will be critical to restoring air quality in this area.

DEC will:

- Conduct all studies necessary to quantify and characterize pollutant contribution and formation mechanisms to lead to violations of the air quality standards.
- Develop appropriate tools and analyze contribution from different sources to devise control strategies for the NAA which will restore the air quality standards
- Continue development of a State Implementation Plan and associated enforcing regulations in preparations for submission to EPA in SFY 2014.

EPA will:

- Provide in-kind and grant funding to prioritize PM<sub>2.5</sub> work in Fairbanks.
- Provide informal review and feedback on intermediate work products related to SIP development.
- Provide Clean Air Act and regulation related guidance in development of State Implementation Plan (SIP).
- Meet with community and elected officials to align interest in the community towards quickly restoring air quality and public health

## **6. Bristol Bay Watershed Assessment Communications**

[NEED TEXT HERE]

DEC and EPA will:

- [NEED TEXT HERE]
- [NEED TEXT HERE]

EPA will:

- [NEED TEXT HERE]
- [NEED TEXT HERE]

DEC will:

- [NEED TEXT HERE]
- [NEED TEXT HERE]
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## **7. Antidegradation**

- [NEED TEXT HERE]
- [NEED TEXT HERE]

## **8. Enforcement Priorities**

- [NEED TEXT HERE]
- [NEED TEXT HERE]

**9. 404 Program – Dredge and Fill Primacy****10. Federal and State Budget Constraints****11. Clean Water Act 319(h) Grant Management for Alaska’s Nonpoint Source Program****12. Clean Water Act 303(d) Issues – Impaired Water Body Listings.**

DEC, through the Air Permits Program, is responsible for ensuring that air emissions from industrial operations in the state do not create unhealthy air. This is accomplished through a fee-based program for permitting actions and compliance assurance inspections. DEC will continue to implement a Title V air operating permit program in accordance with 40 CFR Part 70 and all other applicable requirements. DEC will continue to implement a PSD/NSR air permitting program in accordance with 40 CFR Part 51, Subpart I, and all other applicable requirements.

DEC implements Clean Air Act requirements through its State Implementation Plan (SIP) that includes regulations and plans designed to prevent and mitigate air pollution impacts in Alaska. DEC and EPA coordinate on and prioritize SIP projects to ensure that Alaska’s plan is up to date and federally approvable. In addition to coordinating on SIP projects this year, plans by EPA Headquarters to develop SIP implementation guidance and rules related to the National Ambient Air Quality Standards (NAAQS) are an area of mutual interest. DEC and EPA will communicate as needed on these proposals to help ensure that DEC is aware of opportunities to provide timely input and concerns for consideration.

DEC will:

- Provide to EPA electronic notifications of all permits in draft, proposed and final stages based on regulatory requirements of responses for each program.

EPA will:

- Provide to DEC responses based on its review on Title V permits, PSD/NSR permits and on occasion minor source permits.
- For Alaska, EPA will discuss and set priorities for submitting and processing SIPs through coordination calls at least twice yearly.

EPA has primary compliance and enforcement responsibility for non-delegated federal environmental programs and in “Indian Country” in Alaska as defined in

18 U.S.C. Section 1151. DEC has primary compliance and enforcement responsibility for the state's environmental laws and delegated federal environmental and public health protection programs. It is essential that EPA and DEC coordinate enforcement and compliance with each other.

The EPA and DEC will coordinate enforcement and compliance with each other in a manner consistent with the May 1997 Agreement on Compliance Assurance Principles and the March 1988 Compliance Assurance and Evaluation Principles agreed to by the EPA Region 10 states and the EPA. The EPA and DEC will provide required compliance and enforcement information to each other in an appropriate and timely manner. Current relevant documents include (1) DEC's Enforcement Manual; (2) the Compliance Assurance Agreement between DEC's Air Permits Program and the EPA Office of Air; (3) the Compliance and Enforcement Strategy between DEC's Drinking Water Program and EPA Region 10's Office of Water and Watersheds Drinking Water Unit; and (4) the National Pollutant Discharge Elimination System Memorandum of Agreement between the State of Alaska and United States Environmental Protection Agency, Region 10 (Amended August 11, 2011).

## **VI. Performance Reporting and Evaluation**

DEC and EPA will report on the activities identified in this agreement semi-annually. Reports will be based on information supporting performance measures and program activity measures identified in this agreement outlining accomplishment, existing or potential problems, and suggestions for improvement. The EPA will schedule a report preview meeting with DEC to discuss the report and make appropriate adjustments.

## **VII. Dispute Resolution**

Parties to this agreement realize there may be different expectations and understandings of the terms of this agreement by each party from time-to-time. Resolving those differences early will keep each party focused on the intent of the agreement and avoid difficult, time-consuming situations that disrupt healthy working relationships necessary to achieve mutual success.

The EPA and DEC agree to work issues at the lowest level possible, making reasonable efforts to clarify expectations and understandings. If those responsible for implementing activities and achieving expected performance are not able to resolve disagreements that prevent accomplishments mutually, they are authorized to elevate the matter to the next higher level of responsibility. They will notify their supervisor of this action and schedule a discussion among supervisors and affected staffs. This

elevation process will continue up to the program director level. If a matter is not resolved before reaching the program director level, program directors will notify the agency head that they are engaged in resolving a conflict. Most issues will be resolved either before reaching this level or at the conclusions of the director elevation. However, significant issues may remain and will be addressed between the agency heads.